

LOCAL DISTRICT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill allows the creation of a local district to develop and execute a groundwater management plan in cooperation with the state engineer.

Highlighted Provisions:

This bill:

- ▶ permits a local district to acquire groundwater rights;
- ▶ allows the creation of a local district for the development and execution of a groundwater management plan in cooperation with and approved by the state engineer;
- ▶ provides that a groundwater management plan described in the preceding paragraph may include the banking of groundwater rights if expressly authorized in Title 73, Water and Irrigation;
- ▶ exempts the creation of a local district for the development and execution of a groundwater management plan from the election requirement; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-103, as last amended by Laws of Utah 2008, Chapters 3 and 360

17B-1-107, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-202, as last amended by Laws of Utah 2009, Chapter 218

17B-1-213, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-214, as last amended by Laws of Utah 2009, Chapter 218

17B-1-215, as last amended by Laws of Utah 2009, Chapter 350

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **17B-1-103** is amended to read:

17B-1-103. Local district status and powers.

(1) A local district:

(a) is:

(i) a body corporate and politic with perpetual succession;

(ii) a quasi-municipal corporation; and

(iii) a political subdivision of the state; and

(b) may sue and be sued.

(2) A local district may:

(a) acquire, by any lawful means, or lease any real ~~or~~ property, personal property, or a groundwater right necessary or convenient to the full exercise of the district's powers;

(b) acquire, by any lawful means, any interest in real ~~or~~ property, personal property, or a groundwater right necessary or convenient to the full exercise of the district's powers;

(c) transfer an interest in or dispose of any property or interest described in Subsections (2)(a) and (b);

(d) acquire or construct works, facilities, and improvements necessary or convenient to the full exercise of the district's powers, and operate, control, maintain, and use those works, facilities, and improvements;

(e) borrow money and incur indebtedness for any lawful district purpose;

(f) issue bonds, including refunding bonds:

(i) for any lawful district purpose; and

(ii) as provided in and subject to Part 11, Local District Bonds;

(g) levy and collect property taxes:

(i) for any lawful district purpose or expenditure, including to cover a deficit resulting from tax delinquencies in a preceding year; and

(ii) as provided in and subject to Part 10, Local District Property Tax Levy;

(h) as provided in Title 78B, Chapter 6, Part 5, Eminent Domain, acquire by eminent domain property necessary to the exercise of the district's powers;

(i) invest money as provided in Title 51, Chapter 7, State Money Management Act;

(j) (i) impose fees or other charges for commodities, services, or facilities provided by the district, to pay some or all of the district's costs of providing the commodities, services, and facilities, including the costs of:

(A) maintaining and operating the district;

(B) acquiring, purchasing, constructing, improving, or enlarging district facilities;

(C) issuing bonds and paying debt service on district bonds; and

(D) providing a reserve established by the board of trustees; and

(ii) take action the board of trustees considers appropriate and adopt regulations to assure the collection of all fees and charges that the district imposes;

(k) if applicable, charge and collect a fee to pay for the cost of connecting a customer's property to district facilities in order for the district to provide service to the property;

(l) enter into a contract that the local district board of trustees considers necessary, convenient, or desirable to carry out the district's purposes, including a contract:

(i) with the United States or any department or agency of the United States;

(ii) to indemnify and save harmless; or

(iii) to do any act to exercise district powers;

(m) purchase supplies, equipment, and materials;

(n) encumber district property upon terms and conditions that the board of trustees considers appropriate;

(o) exercise other powers and perform other functions that are provided by law;

(p) construct and maintain works and establish and maintain facilities, including works or facilities:

(i) across or along any public street or highway, subject to Subsection (3) and if the district:

(A) promptly restores the street or highway, as much as practicable, to its former state of usefulness; and

(B) does not use the street or highway in a manner that completely or unnecessarily impairs the usefulness of it;

(ii) in, upon, or over any vacant public lands that are or become the property of the state, including school and institutional trust lands, as defined in Section 53C-1-103, if the director of the School and Institutional Trust Lands Administration, acting under Sections

53C-1-102 and 53C-1-303, consents; or

(iii) across any stream of water or watercourse, subject to Section 73-3-29;

(q) perform any act or exercise any power reasonably necessary for the efficient operation of the local district in carrying out its purposes;

(r) designate an assessment area and levy an assessment on land within the assessment area, as provided in Title 11, Chapter 42, Assessment Area Act;

(s) contract with another political subdivision of the state to allow the other political subdivision to use the district's surplus water or capacity or have an ownership interest in the district's works or facilities, upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the district's board of trustees considers to be in the best interests of the district and the public; and

(t) upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the district's board of trustees considers to be in the best interests of the district and the public, agree:

(i) with:

(A) another political subdivision of the state; or

(B) a public or private owner of property:

(I) on which the district has a right-of-way; or

(II) adjacent to which the district owns fee title to property; and

(ii) to allow the use of property:

(A) owned by the district; or

(B) on which the district has a right-of-way.

(3) With respect to a local district's use of a street or highway, as provided in Subsection (2)(p)(i):

(a) the district shall comply with the reasonable rules and regulations of the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway, concerning:

(i) an excavation and the refilling of an excavation;

(ii) the relaying of pavement; and

(iii) the protection of the public during a construction period; and

(b) the governmental entity, whether state, county, or municipal, with jurisdiction over

126 the street or highway:

127 (i) may not require the district to pay a license or permit fee or file a bond; and

128 (ii) may require the district to pay a reasonable inspection fee.

129 (4) (a) A local district may:

130 (i) acquire, lease, or construct and operate electrical generation, transmission, and
131 distribution facilities, if:

132 (A) the purpose of the facilities is to harness energy that results inherently from the
133 district's:

134 (I) operation of a project or facilities that the district is authorized to operate; or

135 (II) providing a service that the district is authorized to provide;

136 (B) the generation of electricity from the facilities is incidental to the primary
137 operations of the district; and

138 (C) operation of the facilities will not hinder or interfere with the primary operations of
139 the district;

140 (ii) (A) use electricity generated by the facilities; or

141 (B) subject to Subsection (4)(b), sell electricity generated by the facilities to an electric
142 utility or municipality with an existing system for distributing electricity.

143 (b) A district may not act as a retail distributor or seller of electricity.

144 (c) Revenue that a district receives from the sale of electricity from electrical
145 generation facilities it owns or operates under this section may be used for any lawful district
146 purpose, including the payment of bonds issued to pay some or all of the cost of acquiring or
147 constructing the facilities.

148 (5) A local district may adopt and, after adoption, alter a corporate seal.

149 Section 2. Section **17B-1-107** is amended to read:

150 **17B-1-107. Recording a release of lien.**

151 If a local district records a lien upon real property or a groundwater right for an unpaid
152 assessment by the owner and the owner then pays the assessment in full, including any interest
153 and penalties, the local district recording the lien shall record the release of the lien.

154 Section 3. Section **17B-1-202** is amended to read:

155 **17B-1-202. Local district may be created -- Services that may be provided --**
156 **Limitations.**

(1) (a) A local district may be created as provided in this part to provide within its boundaries service consisting of:

- (i) the operation of an airport;
- (ii) the operation of a cemetery;
- (iii) fire protection, paramedic, and emergency services;
- (iv) garbage collection and disposal;
- (v) health care, including health department or hospital service;
- (vi) the operation of a library;
- (vii) abatement or control of mosquitos and other insects;
- (viii) the operation of parks or recreation facilities or services;
- (ix) the operation of a sewage system;
- (x) street lighting;
- (xi) the construction and maintenance of curb, gutter, and sidewalk;
- (xii) transportation, including public transit and providing streets and roads;
- (xiii) the operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether the system is operated on a wholesale or retail level or both;

(xiv) in accordance with Subsection (1)(c), the development and execution of a groundwater management plan in cooperation with and approved by the state engineer in accordance with Section 73-5-15;

~~[(xiv)]~~ (xv) law enforcement service; or
~~[(xv)]~~ (xvi) subject to Subsection (1)(b), the underground installation of an electric utility line or the conversion to underground of an existing electric utility line.

(b) Each local district that provides the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that owns the line.

(c) A groundwater management plan described in Subsection (1)(a)(xiv) may include the banking of groundwater rights if the banking of groundwater rights is expressly authorized in Title 73, Water and Irrigation.

(2) For purposes of this section:

(a) "Operation" means all activities involved in providing the indicated service including acquisition and ownership of property reasonably necessary to provide the indicated service and acquisition, construction, and maintenance of facilities and equipment reasonably necessary to provide the indicated service.

(b) "System" means the aggregate of interrelated components that combine together to provide the indicated service including, for a sewage system, collection and treatment.

(3) (a) A local district may not be created to provide and may not after its creation provide more than four of the services listed in Subsection (1).

(b) Subsection (3)(a) may not be construed to prohibit a local district from providing more than four services if, before April 30, 2007, the local district was authorized to provide those services.

(4) (a) Except as provided in Subsection (4)(b), a local district may not be created to provide and may not after its creation provide to an area the same service already being provided to that area by another political subdivision, unless the other political subdivision gives its written consent.

(b) For purposes of Subsection (4)(a), a local district does not provide the same service as another political subdivision if it operates a component of a system that is different from a component operated by another political subdivision but within the same:

(i) sewage system; or

(ii) water system.

(5) (a) Except for a local district in the creation of which an election is not required under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the unincorporated area of one or more counties and all or part of one or more municipalities.

(b) The area of a local district need not be contiguous.

(6) For a local district created before May 5, 2008, the authority to provide fire protection service also includes the authority to provide:

(a) paramedic service; and

(b) emergency service, including hazardous materials response service.

Section 4. Section **17B-1-213** is amended to read:

17B-1-213. Protest after adoption of resolution -- Adoption of resolution

219 **approving creation for certain districts.**

220 (1) For purposes of this section, "adequate protests" means protests that are:

221 (a) filed with the county clerk, municipal clerk or recorder, or local district secretary or
222 clerk, as the case may be, within 60 days after the last public hearing required under Section
223 17B-1-210; and

224 (b) signed by:

225 (i) the owners of private real property that:

226 (A) is located within the proposed local district;

227 (B) covers at least 25% of the total private land area within the applicable area; and

228 (C) is equal in value to at least 15% of the value of all private real property within the
229 applicable area; or

230 (ii) registered voters residing within the applicable area equal in number to at least 25%
231 of the number of votes cast in the applicable area for the office of governor at the last general
232 election prior to the adoption of the resolution.

233 (2) If adequate protests are filed, the governing body that adopted a resolution under
234 Subsection 17B-1-203(1)(c) or (d):

235 (a) may not:

236 (i) hold or participate in an election under Subsection 17B-1-214(1) with respect to the
237 applicable area;

238 (ii) take any further action under the protested resolution to create a local district or
239 include the applicable area in a local district; or

240 (iii) for a period of two years, adopt a resolution under Subsection 17B-1-203(1)(c) or
241 (d) proposing the creation of a local district including substantially the same area as the
242 applicable area and providing the same service as the proposed local district in the protested
243 resolution; and

244 (b) shall, within five days after receiving adequate protests, mail or deliver written
245 notification of the adequate protests to the responsible body.

246 (3) Subsection (2)(a) may not be construed to prevent an election from being held for a
247 proposed local district whose boundaries do not include an applicable area that is the subject of
248 adequate protests.

249 (4) (a) If adequate protests are not filed with respect to a resolution proposing the

creation of a local district for which an election is not required under Subsection 17B-1-214(3)(c) [~~or (d)~~], (d), or (e), a resolution approving the creation of the local district may be adopted by:

(i) (A) the legislative body of a county whose unincorporated area is included within the proposed local district; and

(B) the legislative body of a municipality whose area is included within the proposed local district; or

(ii) the board of trustees of the initiating local district.

(b) Each resolution adopted under Subsection (4)(a) shall:

(i) describe the area included in the local district;

(ii) be accompanied by a map that shows the boundaries of the local district;

(iii) describe the service to be provided by the local district;

(iv) state the name of the local district; and

(v) provide a process for the appointment of the members of the initial board of trustees.

Section 5. Section **17B-1-214** is amended to read:

17B-1-214. Election -- Exceptions.

(1) (a) Except as provided in Subsection (3) and in Subsection 17B-1-213(2)(a), an election on the question of whether the local district should be created shall be held by:

(i) if the proposed local district is located entirely within a single county, the responsible clerk; or

(ii) except as provided under Subsection (1)(b), if the proposed local district is located within more than one county, the clerk of each county in which part of the proposed local district is located, in cooperation with the responsible clerk.

(b) Notwithstanding Subsection (1)(a)(ii), if the proposed local district is located within more than one county and the only area of a county that is included within the proposed local district is located within a single municipality, the election for that area shall be held by the municipal clerk or recorder, in cooperation with the responsible clerk.

(2) Each election under Subsection (1) shall be held at the next special or regular general election date that is:

(a) for an election pursuant to a property owner or registered voter petition, more than

45 days after certification of the petition under Subsection 17B-1-209(3)(b)(i); or

(b) for an election pursuant to a resolution, more than 60 days after the latest hearing required under Section 17B-1-210.

(3) The election requirement of Subsection (1) does not apply to:

(a) a petition filed under Subsection 17B-1-203(1)(a) if it contains the signatures of the owners of private real property that:

(i) is located within the proposed local district;

(ii) covers at least 67% of the total private land area within the proposed local district as a whole and within each applicable area; and

(iii) is equal in value to at least 50% of the value of all private real property within the proposed local district as a whole and within each applicable area;

(b) a petition filed under Subsection 17B-1-203(1)(b) if it contains the signatures of registered voters residing within the proposed local district as a whole and within each applicable area, equal in number to at least 67% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the office of governor at the last general election prior to the filing of the petition;

(c) a resolution adopted under Subsection 17B-1-203(1)(c) on or after May 5, 2003 that proposes the creation of a local district to provide fire protection, paramedic, and emergency services or law enforcement service, if the proposed local district includes a majority of the unincorporated area of one or more counties; ~~or~~

(d) a resolution adopted under Subsection 17B-1-203(1)(c) or (d) if the resolution proposes the creation of a local district that has no registered voters within its boundaries~~[-];~~ or

(e) a resolution adopted under Subsection 17B-1-203(1)(c) on or after May 11, 2010 that proposes the creation of a local district described in Subsection 17B-1-202(1)(a)(xiv).

(4) (a) If the proposed local district is located in more than one county, the responsible clerk shall coordinate with the clerk of each other county and the clerk or recorder of each municipality involved in an election under Subsection (1) so that the election is held on the same date and in a consistent manner in each jurisdiction.

(b) The clerk of each county and the clerk or recorder of each municipality involved in an election under Subsection (1) shall cooperate with the responsible clerk in holding the election.

(c) Except as otherwise provided in this part, each election under Subsection (1) shall be governed by Title 20A, Election Code.

Section 6. Section **17B-1-215** is amended to read:

17B-1-215. Notice and plat to lieutenant governor -- Recording requirements -- Certificate of incorporation -- Local district incorporated as specialized local district or basic local district -- Effective date.

(1) (a) Within the time specified in Subsection (1)(b), the responsible body shall file with the lieutenant governor:

(i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

(ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

(b) The responsible body shall file the documents listed in Subsection (1)(a) with the lieutenant governor within 10 days after:

(i) the canvass of an election under Section 17B-1-214, if a majority of those voting at the election within the proposed local district as a whole vote in favor of the creation of a local district;

(ii) certification of a petition as to which the election requirement of Subsection 17B-1-214(1) does not apply because of Subsection 17B-1-214(3)(a) or (b); or

(iii) adoption of a resolution under Subsection 17B-1-213(4) approving the creation of a local district for which an election was not required under Subsection 17B-1-214(3)(c) [~~or~~ ~~(d)~~], (d), or (e), by the legislative body of each county whose unincorporated area is included within and the legislative body of each municipality whose area is included within the proposed local district, or by the board of trustees of the initiating local district.

(2) Upon the lieutenant governor's issuance of a certificate of incorporation under Section 67-1a-6.5, the responsible body shall:

(a) if the local district is located within the boundary of a single county, submit to the recorder of that county:

(i) the original:

(A) notice of an impending boundary action;

(B) certificate of incorporation; and

(C) approved final local entity plat; and

343 (ii) if applicable, a certified copy of each resolution adopted under Subsection
344 17B-1-213(4); or

345 (b) if the local district is located within the boundaries of more than a single county:
346 (i) submit to the recorder of one of those counties:
347 (A) the original of the documents listed in Subsections (2)(a)(i)(A), (B), and (C); and
348 (B) if applicable, a certified copy of each resolution adopted under Subsection
349 17B-1-213(4); and

350 (ii) submit to the recorder of each other county:
351 (A) a certified copy of the documents listed in Subsection (2)(a)(i)(A), (B), and (C);
352 and
353 (B) if applicable, a certified copy of each resolution adopted under Subsection
354 17B-1-213(4).

355 (3) The area of each local district consists of:
356 (a) if an election was held under Section 17B-1-214, the area of the new local district
357 as approved at the election;
358 (b) if an election was not required because of Subsection 17B-1-214(3)(a) or (b), the
359 area of the proposed local district as described in the petition; or
360 (c) if an election was not required because of Subsection 17B-1-214(3)(c) [~~or (d)~~], (d),
361 or (e), the area of the new local district as described in the resolution adopted under Subsection
362 17B-1-213(4).

363 (4) (a) Upon the lieutenant governor's issuance of the certificate of incorporation under
364 Section 67-1a-6.5, the local district is created and incorporated as:
365 (i) the type of specialized local district that was specified in the petition under
366 Subsection 17B-1-203(1)(a) or (b) or resolution under Subsection 17B-1-203(1)(c) or (d), if the
367 petition or resolution proposed the creation of a specialized local district; or
368 (ii) a basic local district, if the petition or resolution did not propose the creation of a
369 specialized local district.

370 (b) (i) The effective date of a local district's incorporation for purposes of assessing
371 property within the local district is governed by Section 59-2-305.5.
372 (ii) Until the documents listed in Subsection (2) are recorded in the office of the
373 recorder of each county in which the property is located, a newly incorporated local district

- 374 may not:
- 375 (A) levy or collect a property tax on property within the local district;
- 376 (B) levy or collect an assessment on property within the local district; or
- 377 (C) charge or collect a fee for service provided to property within the local district.

Legislative Review Note
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Office of Legislative Research and General Counsel